



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.59 OF 2021**

Suresh Kevalram Khemani & Ors. .. Applicants

Versus

Central Bureau of Investigation, .. Respondents
Economic Offences Unit-I (Eo-1) & Ors.

...

Mr.Aabad Ponda, Senior Advocate with Mr.Nilesh Tribhuvan,
Mr.Burzin Bharucha, Mr.Sanjay Rege, Mr.Kaushal Popat with
Ms.Jhanavi Shah i/b Ms.Alisha Pinto for the Appellant.

Mr.Kuldeep Patil for the Respondent No.1/C.B.I.

Mr.S.R.Agarkar, A.P.P. for the State/Respondent.

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**CORAM: BHARATI DANGRE, J.
DATED : 14th SEPTEMBER, 2023**

P.C:-

1. The Criminal Revision Application was placed before me for the first time on 23/08/2023 and on the said date, continuing the interim relief, it was directed to be listed on 24/08/2023.

On the next date of hearing, it was directed to be listed on 14/09/2023 at 2.30 p.m., as the matters which normally involve considerable time, are taken up by at 2.30 p.m..

Accordingly, the Revision Application is listed today.

2. In the interregnum and to be precise, four days back, a communication addressed to me, with the cover reflecting my

residential address, from one Hiten Takkar, Plot No.16, Subhash Road, Vile Parle (East), Mumbai - 400 057, is received at my residence in Mumbai, in my absence and it was handed over to me in the evening, pursuant to my return from the Court functioning.

On uncovering of the envelope, I discovered one communication under the signature of one Shri Hiten Takkar and the subject of it was about the Criminal Revision Application, which is scheduled for hearing before me today.

The opening paragraph of the said communication informs the manner in which my Predecessor Judge has recused him and on it being subsequently listed before another Bench, how the interim relief was continued illegally.

Though I do not deem it appropriate to refer to the contents of the said letter, it is definitely indicative, that favour or some benevolence is either done or attempted to be done, in favour of the Applicants, on some monetary terms. A request is, hence, made to dismiss the case and the take the Accused for trial.

3. Upon receipt of the letter, the option open to me is, either I recuse myself from the matter in hand, or continue with same, ignoring the accusations of bias..

Judicial impartiality is the most significant facet of justice and there can be no doubt, that a Judge is expected to decide the legal disputes placed before him, free of any personal bias or prejudice.

A Judge may be impartial, but if a perception is carried by one party that he is not, then the recusal is the only option. In such a situation, it is expected for a Judge to consider, what it is

that might possibly lead to a reasonable apprehension by a fully informed observer that the Judge might decide the case, other than on merit and whether there is “logical and sufficient communication” between the circumstances and the apprehension. The standard of recusal is one of “Real and not Remote possibility” rather than “probability”. The bias definitely operates in such an insidious manner that, a person may be quite unconscious of it’s effect.

4. Upon reading the letter, I may now lack the imperative requirement of being part of a “manifestly independent decision making process”, as Justice must not only be done, but it must be seem to be done. I should have a clear conscience that I am still ‘Independent’ and capable of discharging my duty in deciding the case, being uninfluenced by the communication addressed to me.

The decision is ultimately left to me and since, I am bound by the oath of my office and keep up the promise of dispensing fair and impartial justice, without fear and favour, affection or ill will; which are the enemies of an independent decision making process, I deem it appropriate to recuse myself not because I have been asked to decide one way, but because I feel it necessary to do so, to avoid further accusations of favour being shown or if I have to dispel the accusations, necessarily I may be compelled to decide the other way, which may even mean injustice to one of the party.

At this stage, I deem it appropriate to quote the words of Justice Venkatachalliah in *Ranjit Thakur Vs. Union of India*¹, “The proper approach for the Judge is not to look at his own mind and ask himself, however, honestly, ‘Am I biased?’ but to look at the mind of the party before him.”

¹ 1987(4) SCC 611

5. Recusal definitely cannot be used as a tool to manoeuvre justice, as a means of Bench hunting or Forum shopping, or as an instrument to evade judicial work.

It is not for the first time that communications casting aspersions are addressed to the dispensors of justice, some times with a specific intent of picking Benches of the party's choice and at times, as a mode of browbeating the system.

It was open for me to recuse, without disclosing the reason, but it is high time that some accountability is attributed to the disgruntled elements, who continue to haunt the system by their unscrupulous acts and walk away, without waiting for consequences of their intimidating action, once the Judge recuse from the matter and it is time to show that the system to continue it's unflinching loyalty to 'Justice'.

6. In the peculiar facts, I deem it appropriate to take the communication received in an envelope on record, by marking the same as **Exhibit 'I'** and forward the same to the Registrar (Judicial I) in a sealed envelope, to be retained by him, till the appropriate actions are issued.

The Registrar (Judicial I) shall make available the copy of the same alongwith the envelope to Mr.Kuldeep Patil, the learned counsel appearing for C.B.I., who shall bring it to the notice of Central Bureau of Investigation, Headquarter, Mumbai, with an expectation that it shall take cognizance of this judicial impropriety, by conducting necessary inquiry into the same, as the sender has disclosed his name and address on the envelope, as well as in the communication.

7. At this stage, the learned senior counsel Mr.Ponda would assertively submit that the attempt at the instance of the person, who has addressed the communication, amounts to interference in the administration of justice, as the case was due for hearing, but the concerned Court has to recuse and the same has happened in the past also and, therefore, he would make a request to initiate the proceedings under the Contempt of Court Act.

However, I defer this action till the report of C.B.I. is placed before me and the existence of the sender is affirmed.

For this limited purpose of placing the report, re-notify to 29/09/2023.

8. For the aforesaid reason, I recuse myself from hearing the Revision Application No.59 of 2021, with liberty to the Applicants to request the matter to be placed before another Alternate Bench.

The interim relief, which is granted, shall continue to remain in operation till the matter is placed before another Bench.

(SMT. BHARATI DANGRE, J.)